OCT 29 1982

No. 82-453

IN THE

Supreme Court of the United States

October Term, 1982

FRANCIS OIL & GAS, INC., CURTIS S. GREEN, DAVE R. SYLVAN, GEORGE D. DALY, GEORGE B. KAISER and DON H. NELSON, individually and on behalf of all other persons similarily situated, collectively and as a class,

Petitioners,

v.

EXXON CORPORATION and MARATHON OIL COMPANY, individually and on behalf of all other persons similarily situated, collectively and as a class,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE

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The Independent Petroleum Association of America and the National Stripper Well Association, together with:

American Association of Petroleum Landmen
Arkoma Basin Independent Gas Producers Association
California Independent Producers Association
Eastern Kansas Oil and Gas Association, Inc.
Illinois Oil and Gas Association
Independent Oil and Gas Association of West Virginia
Independent Oil Producers Tri-State, Inc.

Independent Petroleum Association of Mountain States
Independent Petroleum Association of New Mexico
Indiana Oil and Gas Association
Kansas Independent Oil and Gas Association
Kentucky Oil and Gas Association
Liaison Committee of Cooperating Oil and Gas Associations
Louisiana Landowners Association, Inc.
Louisiana Association of Independent Producers and Royalty Owners
Michigan Oil and Gas Association
New York State Oil Producers Association
North Texas Oil and Gas Association
Ohio Oil and Gas Association
Oklahoma Independent Petroleum Association
Panhandle Producers and Royalty Owners Association
Pennsylvania Grade Crude Oil Association
Pennsylvania Oil and Gas Association
Permian Basin Petroleum Association
Royalty Owners and Independent Oil and Gas Producers Association of Arkansas
Tennessee Oil and Gas Association
Texas Independent Producers and Royalty Owners Association
Virginia Oil and Gas Association
West Central Texas Oil and Gas Association

hereby respectfully move for leave to file the attached brief Amici Curiae in this case. The consent of the attorneys for all parties to this case was sought by telegram on October 25, 1982. By telephone, Counsel for Petitioners consented, and Counsel for Respondents denied, consent for the filing of the brief. Brief for Amici Curiae was not filed at an earlier time because counsel for Amici Curiae first learned of the pendency of this case in this court on Friday, October 22, 1982.

Interest of Amici Curiae

The Independent Petroleum Association of America (IPAA) is a national trade association founded in 1929 and consisting of some 7,500 members, principally domestic independent explorer—producers and royalty owners of crude oil and natural gas throughout the United States. The National Stripper Well Association (NSWA) is a national trade association founded in 1934 consisting of persons and firms who are primarily producers or royalty owners of stripper well crude oil throughout the United States. The twenty-nine other Amici Curiae organizations are separate, unaffiliated national, state or regional associations of individuals and firms which are explorer-producers or royalty owners of crude oil or engaged in supporting activity to oil producers. The combined membership of all Amici Curiae organizations together represent essentially all of the some 15,000 independent explorer-producers of crude oil and natural gas and several thousand crude oil royalty owners in the United States. The membership of these organizations account for approximately 90 percent of the wildcat exploratory drilling in the United States, drill some 85 percent of all wells in the United States, and have discovered more than 50 percent of the known crude oil and natural gas reserves in the United States.

The decision of the Temporary Emergency Court of Appeals herein challenged is of national significance. It will have a substantial impact on the domestic oil and natural gas industry and the individual members of the Amici Curiae associations. The decision will have a particularly significant impact on small independent oil and natural gas producers. Therefore, the IPAA, NSWA, and other Amici Curiae organizations, on behalf of their members, file this Amici Curiae brief in support of the Petition for a Writ of

Certiorari. The TECA decision raises substantial federal issues which should be resolved by this court.

Respectfully submitted,

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October 29, 1982

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as Amici Curiae respectfully submit their brief urging this court to grant a Writ of Certiorari to review the judgment of the Temporary Emergency Court of Appeals of the United States in *Francis Oil & Gas, Inc. et. al. v. Exxon Corporation, et. al.*, _____ F.2d _____ (TECA, 1982), entered on August 16, 1982.

INTEREST OF AMICI CURIAE

The Independent Petroleum Association of America (IPAA) is a national trade association founded in 1929 consisting of some 7,500 members, principally domestic independent producers and royalty owners of crude oil and natural gas throughout the United States. The National Stripper Well Association (NSWA) is a national trade association founded in 1934 consisting of persons and firms who are primarily producers or royalty owners of stripper well crude oil throughout the United States. The twentynine other Amici Curiae organizations are separate, unaffiliated national, state or regional associations of individuals and firms which are explorer-producers or royalty owners, of crude oil or engaged in supporting activity to oil producers. The combined membership of all Amici Curiae organizations together represent essentially all of the some 15,000 independent explorer-producers of crude oil and natural gas and several thousand crude oil royalty owners in the United States. The membership of these organizations account for 90 percent of the wildcat exploratory drilling in the United States, drill some 85 percent of all wells in the United States, and have discovered more than 50 percent of the known crude oil and natural gas reserves in the United States.

ARGUMENT

This Court should grant the Petition for Writ of Certiorari of Francis Oil & Gas, Inc., et. al. to review the judgment of the Temporary Emergency Court of Appeals in this case. The issue decided by TECA will have direct significant impact on the entire domestic petroleum industry, its ability to maintain production of domestic stripper well crude oil, and the potential premature abandonment of billions of barrels of proven crude oil reserves. Thus, the issues decided will have significant

impact on the national economy, energy independence, and national security. Further, TECA's decision is contrary to both the intent of Congress and the Department of Energy which drafted and promulgated the imputed stripper well oil rule, and the common understanding and practice within the industry.

I. Special Nature of Stripper Well Crude Oil

The importance and special identity of stripper well crude oil have consistently been recognized by both Congress and the Department of Energy (and its predecessor, Federal Energy Administration) and other agencies of the federal government throughout the history of regulation of domestic crude oil. The marginal economic status of stripper well crude oil is recognized by the creation of the stripper well classification. Seventy-four percent of all U.S. oil wells are stripper wells. In 1981, stripper wells accounted for 13 percent of total domestic crude oil produced and total proven recoverable reserves of 4.4 billion barrels of crude oil.

II. Extension of Holding to Windfall Profit Tax Act

TECA's decision raises important questions as to the interpretation of the imputed stripper well oil rule, both as to the crude oil price control mechanism and implementation of the Crude Oil Windfall Profit Tax Act of 1980 (PL 96-223, Apr. 2, 1980). The decision also raises questions concerning TECA's jurisdiction over regulations of the Internal Revenue Service implementing the Windfall Profit Tax Act of 1980. The Windfall Profit Tax Act (26 USC 4996(b)(8) treats ". . . as continuing in effect without regard to decontrol of oil prices or any other termination of the application of such regulations," the crude oil price control regulations of the Department of Energy, including the imputed stripper well oil rule, for purposes of interpreting and administering the Windfall Profit Tax Act.

III. Decision Contrary to Intent of Congress and Department of Energy

It is quite clear that TECA's decision is directly contradictory to the regulatory intent. The imputed stripper well oil rule was intended to remove the disincentive for stripper well owners to consent to the unitization of their properties. Prior to adoption of the imputed stripper well rule, the creation of a unit which included their property would have destroyed the "stripper well property" classification of individual tracts because of aggregation of production, thereby threatening the loss of the higher prices and exemption from price controls available to stripper well oil. In drafting the regulations, the drafters made the conscious decision to permit state law to govern the allocation of the imputed stripper well oil among the unit participants. 10 C.F.R. Sec. 212.75, 41 Fed. Reg. 4931, 4937 (Feb. 3, 1976). TECA's decision essentially removes state law from that determination. The TECA decision erects a rebuttable presumption that the federal regulation effects an allocation among all the unit participants according to the participation formula in the individual unit agreement, unless a clear and unequivocal statement to the contrary is found in the agreement. It is unclear exactly what residual role state law is permitted to have under the TECA decision. It is clear that even if a state law, absent a specific grant to the unit participants as a whole, would reserve the imputed stripper well oil to the stripper tract owner, that state law could not be determinative. The rebuttable presumption would still remain and the imputed stripper well oil would be distributed among the unit participants. It is ironic that the TECA decision construes the federal regulation to place the burden of negotiation on the individual stripper well tract owner in disregard of the considerable disparity of bargaining power between the individual stripper well

owner and the unit developer even in the best of circumstances. In many states, unitization is mandatory either upon initiative of the state regulatory body or upon initiative of the owners of a certain percentage of the tracts and/or production sought to be unitized. In such instances, the individual stripper well owner has no bargaining power whatsoever. TECA's decision negates the primary intent of the regulation to remove significant disincentives for stripper well owners to enter into unitization. Thus, the decision will impair efforts to maximize production of domestic crude oil and avoid premature abandonment of billions of barrels of known proven crude oil reserves. Such result would be damaging to the national economy, energy self-sufficiency and national security. This alone is cause enough for this court to grant certiorari and review the decision of TECA.

IV. Decision Contrary to Established Industry Practice

The decision of TECA runs contrary to the understanding and common practice and usage in the oil and gas industry. Consequently, TECA's decision will impact substantially on long established relationships that, prior to TECA's decision, remained unquestioned. It has been the practice in the oil and gas industry to assume that under the regulations, absent specific provisions in the unit agreement, the stripper well tract owner retains the imputed striper well oil derived from his tract. Equally important, the stripper well tract owner in all circumstances, irrespective of provisions in the unit agreement, retains his separate identity as a stripper well producer and his ability to claim, unilaterally, a stripper well crude oil exemption. Amici Curiae would note that there was substantial testimony given below in the District Court proceedings concerning industry standards and practices. (See R. 1139-1142).

V. Jurisdictional Issues

This court should review TECA's decision as to its appellate jurisdiction and set forth definitively the jurisdictional parameters within which TECA is confined. TECA's decision in this case constitutes a significant expansion of the jurisdiction understood by other courts of appeal. As noted above, the crude oil price control regulations construed by TECA have been extended beyond the life of the crude oil price control program for purposes of interpreting and administering the Windfall Profit Tax Act of 1980. TECA's decision therefore raises questions concerning its jurisdiction over regulations and activities of the Department of Treasury and Internal Revenue Service with regard both to the treatment of striper well oil and jurisdiction of cases arising under the Windfall Profit Tax Act.

CONCLUSION

For reasons set forth above, IPAA and the other Amici Curiae respectfully request this court to grant petitioners' Petition for a Writ of Certiorari.

Respectfully submitted,

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